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IN THE

Supreme Court of the United States

October Term, 1966

NO. [redacted] 124

MATIAS SANDOVAL, ET UX., *Petitioners*

v.

JACK RATTIKIN, TRUSTEE, *Respondent*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

October Term, 1966

NO. 1297

MATIAS SANDOVAL, ET UX., *Petitioners*

v.

JACK RATTIKIN, TRUSTEE, *Respondent*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners petition for rehearing of the Court's order of October 17, 1966 denying their petition for certiorari, urging, in support hereof, the following grounds available to petitioners but not previously presented:

1. As indicated in the dissenting opinion of Mr. Justice Fortas, this Court has established the requirement, derived from 14th Amendment due process, that state courts in civil actions must afford each litigant opportunity to be heard. *Armstrong v. Manzo,* 380 U.S. 545 (1965). Necessarily implicit in the majority holding of the court below is a refusal to enforce that requirement in this case.

The inevitable effect of that holding is to leave unredressed the deprivation of petitioners' home by a judgment in a civil suit in which they were precluded from having opportunity to present proof as to their defenses because of ineffective assistance of their legal aid counsel furnished by the State.

2. Subsequent to denial of certiorari, petitioners and their counsel became aware, for the first time, of *Link v. Wabash Railroad Company*, 370 U.S. 626 (1962), and of the dissenting opinion in that case written by Mr. Justice Black, and joined in by the Chief Justice. Petitioners especially invite the Court's attention to that opinion. Its reasoning applies equally here. Petitioners urge the Court to re-examine their certiorari petition in the light of that reasoning. In *Gideon v. Wainwright*, 372 U.S. 335 (1963) the Court approved similar reasoning as basis for enforcing in favor of an accused in a State criminal prosecution the Sixth Amendment right to effective assistance or counsel. The accused in *Gideon* did not show any more basis for having that reasoning applied than do petitioners here. Petitioners, because of indigence, were forced to rely on counsel furnished by the State, the same as was true of Gideon. Petitioners having been furnished a legal aid lawyer is not a circumstance that improved their situation over that of Gideon, who had no lawyer, because, as the record in the present case conclusively shows, petitioners' lawyer was so lacking in competence and effectiveness that what he did and what he failed to do amounted in truth to no legal representation at all.

3. The majority holding of the court below conflicts with principles announced by the United States Courts of Appeals, and particularly the following cases decided by the Court of Appeals for the Fifth Circuit: *McKenna v.*

Ellis, 280 F.2d 592 (1960); *Porter v. U.S.*, 298 F.2d 461 (1962); *Randazzo v. U.S.*, 339 F.2d 78 (1964); and *Pineda v. Bailey*, 340 F.2d 162 (1965). In each of those cases the accused was afforded relief because of due process deprivation resulting from lack of effective assistance of counsel. The fact that the present case is a civil suit should not make inapplicable here the principles applied in those cases. The concept of effective assistance of counsel ought to be the same in both civil and criminal cases. An indigent defendant deprived of his property by a judgment in a civil suit in which the assistance he received from counsel furnished by the State was less than effective (which is the situation of petitioners in the present case) is just as much denied due process guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution as is an indigent accused deprived of his life or liberty by a sentence in a criminal action in which the assistance he received from counsel furnished by the State was less than effective.

4. Indigents such as petitioners, who must rely on free legal services, will not have fully achieved the reality of first-class citizenship in civil litigation affecting their property rights at any time before there is a decision by this Court establishing their right, under 14th Amendment due process, to receive effective assistance of counsel furnished by the State. Such a decision is especially needed in this case at this time in order to prevent the inevitable confusion in the law that will exist in regard to that right if the majority holding of the court below is allowed to stand uncorrected. By such a decision this Court could make it certain, once for all, that effective assistance by counsel furnished indigents in civil litigation is as much a requirement of 14th Amendment due process as in criminal cases.

WHEREFORE, for the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Civil Appeals for the Thirteenth Supreme Judicial District of Texas at Corpus Christi, Texas.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

I further certify that a true copy of this petition for rehearing was by me served upon opposing counsel (to wit, Richard Owens, 2007 W. T. Waggoner Bldg., Fort Worth, Texas, and Alston Terry, 729 Wilson Building, Corpus Christi, Texas) by mailing to each of such counsel, in an envelope addressed to him and with first class postage prepaid, a true copy hereof.

Roger Butler, of Counsel for
Petitioners